

Hon. Ronald Reinstein, Ret.  
Chair, Supreme Court Commission on Victims in the Courts  
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**IN THE SUPREME COURT  
STATE OF ARIZONA**

|                          |   |                              |
|--------------------------|---|------------------------------|
| In the Matter of:        | ) |                              |
| PETITION TO AMEND RULE   | ) | Supreme Court No. R-08-_____ |
| 31.6, RULES OF CRIMINAL  | ) |                              |
| PROCEDURE, AND RULE 103, | ) |                              |
| RULES OF PROCEDURE IN    | ) |                              |
| JUVENILE COURT           | ) |                              |
| _____                    | ) |                              |

Pursuant to Arizona Supreme Court Rule 28, Ronald Reinstein, Chair of the Supreme Court Commission on Victims in the Courts, respectfully petitions this Court to adopt the attached proposed amendments to Rule 31.6 of the Arizona Rules of Criminal Procedure, and Rule 103 of the Rules of Procedure for Juvenile Court.

Crime victims in Arizona are entitled to receive “prompt restitution from the person or persons convicted of the criminal conduct that caused the victim’s loss or injury.” Ariz. Const. art. 2, §2.1(A)(8); *State v. Hansen*, 215 Ariz. 287, 160 P.3d 166 (2007). During the pendency of an appeal, present law requires the defendant to pay restitution into the court, but stops short of requiring the court to disburse the money

collected to the victim, “[restitution] payments *may* be held by the court pending the outcome of an appeal,” A.R.S. §13-804(D)(emphasis added). While the rules of procedure applicable in adult criminal cases are silent on whether to disburse restitution, the rules applicable in juvenile delinquency require the court to hold the money pending appeal. A statewide standard is needed to ensure victims will receive consistent judicial rulings from case to case and across all case types in which restitution may be ordered by a superior court judge.

The amendments proposed herein establish a standard for determining whether the victim will receive restitution payments collected by the court pending an appeal. The proposed amendments add language modeled after Rule 7.2(c) & (d) of the Rules of Criminal Procedure, governing the trial court’s determination whether to release or detain a defendant pending appeal. The proposed amendments require disbursement of restitution unless the defendant can demonstrate to the court sufficient grounds for a stay. This burden parallels the one the defendant must meet to delay a sentence of imprisonment pending appeal.

For the Superior Court Rules of Appellate Procedure – Criminal, which govern justice and municipal court appeals, no parallel amendment is proposed because the volume of limited jurisdiction court convictions reversed on appeal is higher than at the general jurisdiction court level, limited jurisdiction court appeals are resolved

relatively quickly, and the proposal is likely to engender significant administrative burdens for limited jurisdiction courts.

Wherefore, petitioner respectfully requests that this Court amend Rules 31.6 and 103 as set forth in Appendix A.

RESPECTFULLY SUBMITTED this 6th day of January, 2009

By \_\_\_\_\_  
/s/ Hon. Ronald Reinstein, Chair,  
Supreme Court Commission on Victims  
in the Courts  
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## Appendix A

### Rules of Criminal Procedure

#### Rule 31.6. Stay of execution of sentence and credit pending appeal

- (a) A sentence of imprisonment shall be stayed pending appeal when the defendant is released in accordance with Rule 7.2 (c). A defendant who remains in custody during the pendency of an appeal shall receive the same benefits as if no appeal has been taken.
- (b) A sentence to pay a fine shall be stayed pending appeal. A sentence to pay restitution shall not be stayed pending appeal. Disbursement of restitution collected by the court shall not be stayed pending appeal, unless the defendant establishes, by a preponderance of the evidence, reasonable grounds to believe the conviction may either be set aside on a motion for new trial, reversed on appeal, or vacated in any post-conviction proceeding, or that the restitution order may be reduced or vacated. The stay on disbursement shall be revoked if the defendant fails to prosecute the appeal diligently.

### Rules of Procedure for the Juvenile Court

#### Rule 103. Initiation of an Appeal

- (A) [no changes]
- (B) The order of the juvenile court shall not be suspended or the execution thereof stayed pending the appeal except the appellate court may suspend or stay the execution thereof provided suitable provision is made for the care and custody of the child. In exercising its discretion hereunder, the appellate court may consider the likelihood that the order on appeal will be reversed, the best interests of the child, and any other pertinent legal or equitable questions. If restitution is ordered to be paid, monies paid for restitution shall not be held by the clerk of the superior court from which the appeal is filed pending the final outcome of the appeal, unless the juvenile establishes, by a preponderance of the evidence, reasonable grounds to believe the final order of the juvenile court may either be set aside on a motion for new trial, reversed on appeal, or vacated in any post-adjudication proceeding, or that the restitution order may be reduced or vacated. The stay on disbursement shall be revoked if the juvenile fails to prosecute the appeal diligently.
- (C) through (G) [no changes]